

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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Federal Communications Commission
Office of the Secretary

In re)
)
Amendment of) MM Docket No.
Section 73.202(b)) 92-
of the Commission's Rules,) RM- 7151
Table of Allotments,)
FM Broadcast Stations)
(Fruitland and Weiser, Idaho))

To: The Chief, Allocations Branch,
Mass Media Bureau

PETITION FOR RULE MAKING

Treasure Valley Broadcasting Company ("Treasure Valley"), the licensee of station KWEI-FM, Channel 257A, Weiser, Idaho, hereby requests the FCC to amend Section 73.202(b) of the Rules to upgrade station KWEI-FM and change its community of license. Specifically, Treasure Valley seeks: substitution of Channel 258C1 at Fruitland, Idaho for Channel 257A at Weiser; and a concomitant modification of KWEI-FM's license. Schematically, Treasure Valley's proposed amendment to the FM Table is follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Fruitland, Idaho	---	258C1
Weiser, Idaho	257A	----

As Treasure Valley will show, these changes will clearly serve the public interest.

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List A B C D E

1/ Treasure Valley's other radio station, KWEI(AM), would remain licensed to the community of Weiser, Idaho.

I. BACKGROUND

1. The 1990 U.S. Census lists the population of Weiser as 4,771, of Fruitland as 2,456, and lists both Weiser and Fruitland as incorporated communities. According to the 1990 Rand-McNally Commercial Atlas and Marketing Guide, Fruitland has its own post office, zip code, and bank. Two broadcast stations serve Weiser, station KWEI-FM and commonly owned station KWEI(AM). Fruitland, however, has no local service. Treasure Valley proposes herein to remedy that unfair distribution of transmission service. Moreover, Treasure Valley has discovered that it can also upgrade the station to Class C1 status on Channel 258, in full compliance with the FCC's technical rules, without any other changes in the FM Table of Allotments.

II. ARGUMENT

A. The Proposed Change To The FM Table Will Create A Preferential Arrangement of FM Allotments

2. The Report and Order in MM Docket No. 88-526, 4 FCC Rcd. 4870 (1989), recons. granted in part, 5 FCC Rcd. 7094 (1990), changed the FCC's rules to encourage FM broadcast stations to relocate to unserved and underserved communities. Specifically, the FCC modified Section 1.420 to shield an FM licensee from competing expressions of interest in a relocated allotment if that allotment is technically mutually exclusive with that which the station currently occupies.

3. The proposed reallocation must advance the goals of Section 307(b) of the Communications Act of 1934, as amended, and

must not deprive a community of its only local service. Id. The FCC judges allotment proposals by the following priorities:

- (1) first aural service;
- (2) second aural service;
- (3) first local service; and
- (4) other public-interest factors.

Priorities (2) and (3) have equal rank. Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

4. Measured against these standards, Treasure Valley's proposal would clearly result in a preferential rearrangement of FM allotments. Weiser currently enjoys two local services, but Fruitland has none. Upon adoption of Treasure Valley's proposal, Weiser would still enjoy a local service (and reception service from KWEI-FM), and Fruitland would gain a first local service.

5. Fruitland, an incorporated town with a full range of civic attributes, fully deserves a transmission service. Treasure Valley's Fruitland proposal (a Priority-3 allotment) outranks the status quo, a second local service (a Priority-4 allotment). Relicensing KWEI-FM to Fruitland thus represents a preferred use of the spectrum. Moreover, based on FM spacing requirements, Channel 257A at Weiser and Channel 258C1 at Fruitland cannot coexist.^{2/} Accordingly, the FCC may not entertain competing expressions of interest for a KWEI-FM facility relicensed to Fruitland. Report and Order in MM Docket No. 88-526, supra.

^{2/} Weiser and Fruitland are only about 25 km apart. Section 73.207(a) of the Rules requires domestic first-adjacent-channel Class A and Class C1 stations to be 133 km apart.

B. The Proposed Upgrade Will Also Serve The Public Interest

6. The Report and Order in MM Docket No. 85-313, 50 Fed. Reg. 20290 (1986), also changed the FCC's rules to encourage FM broadcast stations to upgrade to higher classes. Specifically, the FCC modified Section 1.420 to shield an FM licensee from competing expressions of interest in an upgraded allotment if that allotment is technically mutually exclusive with that which the station currently occupies.

7. The proposed upgrade will result in a much more efficient use of the spectrum. Station KWEI-FM serves Weiser on Channel 257A with 3 kW of ERP and -45 meters of HAAT. The station's licensed parameters are thus radically below the 100-kW ERP, 299-meter HAAT Class C1 maximum specified in Section 73.211(b) of the Rules. Were station KWEI-FM to upgrade to Channel 258C1 as proposed herein, the resulting, dramatically improved spectral efficiency would clearly serve the public interest. Endicott, New York, 51 FCC 2d 50, 51 (1975). Because of the incompatibility of Channel 257A and Channel 258C1 allotments in the same general area (see n. 2 above), no one may file a competing expression of interest in the upgraded channel.

8. Treasure Valley can upgrade station KWEI-FM to Channel 258C1 and relicense the facility to Fruitland in total compliance with the FCC's technical rules, including full spacing and the requisite level of city-grade coverage. See Exhibit A, the Technical Statement of Louis R. duTreil, P.E., Treasure Valley's consulting engineer.

C. Other Matters

9. Treasure Valley intends, if the Commission amends the FM Table as Treasure Valley requests herein, to promptly apply for a construction permit specifying operation of KWEI-FM on Channel 258C1 at Fruitland. Upon grant of that application, Treasure Valley intends to construct, place into operation, and seek a covering license for the improved KWEI-FM facility.

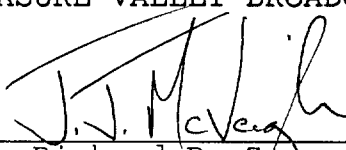
III. CONCLUSION

For the reasons stated above, relicensing station KWEI-FM to Fruitland and upgrading the facility to Channel 258C1 will serve the public interest. Accordingly, the Commission should promptly institute a rule making looking toward an amendment to the FM Table of Allotments and a concomitant modification of KWEI-FM's station license as Treasure Valley has proposed herein.

Respectfully submitted,

TREASURE VALLEY BROADCASTING COMPANY

By


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Date: March 13, 1992

EXHIBIT A

TECHNICAL STATEMENT
PREPARED ON BEHALF OF
TREASURE VALLEY BROADCASTING COMPANY
STATION KWEI-FM
FRUITLAND, IDAHO

This technical statement has been prepared on behalf of Treasure Valley Broadcasting Company, licensee of FM broadcast station KWEI-FM, Weiser, Idaho. Station KWEI-FM operates on channel 257A employing effective radiated power of 3 kilowatts and antenna height above average terrain of -45 meters.

This technical statement supports a petition for rule making which requests modification of 47 CFR 73.202, Table of Allotments, to move the allotment from Weiser, Idaho to Fruitland, Idaho and to change channel from 257A to 258C1. The proposed channel change can be made in compliance with FCC requirements. The city of Weiser will retain the assignment of AM broadcast station KWEI, which operates on 1260 kilohertz with power of 1000 watts daytime and 60 watts nighttime.

It is proposed to change the Table of Allotments as follows:

<u>Community</u>	<u>Channel</u>	
	<u>Existing</u>	<u>Proposed</u>
Weiser, Idaho	257A	---
Fruitland, Idaho	---	258C1

Fruitland, Idaho is listed in the 1980 Census as having population of 2,456 persons. The city is located in Payette County which had 1980 Census population of

15,722. Allotment of channel 258C1 to Fruitland will provide the community with its first local radio service.

The attached tabulation shows the pertinent channels and stations associated with use of channel 258C1 at Fruitland by KWEI-FM. As will be noted, the proposed use of the channel meets all separation requirements of 47 CFR 73.207. The tabulation shows one separation which is not met with respect to the licensed operation of station KQXR, Payette, Idaho, on channel 261A. Station KQXR has been ordered to channel 262C1 as a result of Docket No. 82-665. An application is pending for KQXR to change to channel 262C1, File No. BPH-911206IE.

From the reference coordinates selected for the proposed use of channel 258C1, KWEI-FM can easily meet the requirement of providing 70 dBu signal strength over the entire city of Fruitland.

The above study information shows that channel 258C1 can be assigned to Fruitland, Idaho in conformance with all FCC rules and requirements.



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March 10, 1992

TECHNICAL STATEMENT
PREPARED ON BEHALF OF
TREASURE VALLEY BROADCASTING COMPANY
STATION KWEI-FM
FRUITLAND, IDAHO

FM Allocation Study
Channel 258C1 at Fruitland, Idaho

Reference Coordinates: 44° 03' 44" North Latitude
116° 54' 22" West Longitude

<u>Station</u>	<u>Channel</u>	<u>Separation (km)</u>	
		<u>Actual</u>	<u>Required</u>
KLJV-FM, Mountain Home, ID	256C1	143.5	82
Alloc., Pullman, WA	258C1	290.5	245
Alloc., LaGrande, OR	260C1	172.2	82
KQXR, Payette, ID	261A*	0.1	75

*Channel changed to 262C1 in Docket No. 82-665. Application pending for KQXR, File No. BPH-911206IE, to utilize channel 262C1.

CERTIFICATE OF SERVICE

I, Julia Colish, a secretary to the law firm of Fisher, Wayland, Cooper and Leader, hereby certify that I have this Thirteenth day of March, 1992 sent copies of the foregoing "PETITION FOR RULE MAKING" by hand delivery to:

Andrew J. Rhodes, Esq.
Chief, Allocations Branch
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Julia Colish